

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Final Office Action dated December 2, 2008, are respectfully requested in view of this amendment, accompanied by a Request for Continued Examination. Claims 1-8 , 10 and 11 are pending.

In the outstanding Office Action, the Examiner rejected claims 1-8 and 10-11 under 35 U.S.C. §103(a) as being unpatentable over European Patent Document EP 1 068 093 B1 to Brose Fahrzeugteile GmbH & Co. KG Coburg by Taubmann et al. (hereinafter referred to as "Taubmann et al.") in view of the Examiner's assertion that "[i]t is well known in the art to provide gussets, to add stability to elements as seen in" U.S. Patent No. 5,267,717 to Isomura, U.S. Patent No. 5,516,071 to Miyauchi, and U.S. Patent No. 5,259,257 to Mouri.

Claim 1 has been amended for the sole reason of advancing prosecution. Applicants, by amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert the original claim scope of any claim amended herein in a continuing application. Support for the amendments can be found throughout the specification, claims and figures as originally filed, at least on page 7, line 31 through page 8, line 3 of the original specification.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

Claim Rejections under 35 U.S.C. §103(a)

The Examiner rejected claims 1-8 and 10-11 under 35 U.S.C. §103(a) as being unpatentable over Taubmann et al. in view of the Examiner's assertion that "[i]t is well known in the art to provide gussets, to add stability to elements as seen in" U.S. Patent No. 5,267,717 to Isomura, U.S. Patent No. 5,516,071 to Miyauchi, and U.S. Patent No. 5,259,257 to Mouri.

Response

Claims 1-8, 10 and 11 have been amended or depend upon amended claims and, as amended, the rejections thereto are respectfully traversed. Applicants traverse the rejections as all of the features of the presently claimed subject matter are not disclosed, taught or suggested by the cited prior art of record. To establish a *prima facie* case of obviousness, the Examiner must establish that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18, USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ2d 494, 496 (CCPA 1970).

A *prima facie* case of obviousness must also include a showing of the reasons why it would be obvious to modify the references to produce the present invention. *See Dystar Textilfarben GMBH v. C. H. Patrick*, 464 F.3d 1356 (Fed. Cir. 2006). The Examiner bears the initial burden to provide some convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings. *Id.* at 1366.

Amended independent claim 1 recites:

Drive for a seat adjusting device, in particular for motor vehicles, *with spindle (5) which is affixed to a first rail (4)* of two rails (3, 4) that are adjustable relative to one another, *by means of at least one support (60)* that is located on the end of the spindle (5), and with a gear mechanism (9) which is driven by a motor (2) and which is arranged on the second rail (3), characterized in that the at least one support (60) *has a trough-shaped, outer bearing surface (66)* on a solid, block-like limb (61), in which bearing surface one end of the spindle (5) rests in a stationary manner, *the at least one support consisting of a cold-extruded part made from metal.* (emphases added).

In contrast to the presently claimed subject matter, Taubmann et al. does not disclose, teach or suggest a “[d]rive for a seat adjusting device... with spindle... which is affixed to a first rail... by means of at least one support... *has a trough-shaped, outer bearing surface...the at least one support consisting of a cold-extruded part made from metal*” (emphases added) as recited in independent claim 1. The Examiner “notes that the spindle’s attachment to the support device is merely an alternative method for fastening the elements together. Taubmann further teaches a block-like limb **6b** attached to the support device.” See page 3, lines 3-5 of the Office Action. However, the above discussion by the Examiner bypasses discussion of the feature that Taubmann clearly lacks, that of the shape of the support device, in favor of discussion of the attachment *to* the support device.

Indeed, L-shaped punched and bent parts are precisely a problem disclosed in the original

specification as intended to be addressed and solved by the claimed subject matter. In contrast, the non-desired punched and bent parts are disclosed in all of the Examiner cited prior art references.

As all of the features of the independent claims are not disclosed, taught or suggested by the cited references, the presently claimed subject matter is not rendered obvious by the cited references. Similarly, as the dependent claims necessarily recite all of the features of the independent claim from which they depend, the claims that depend from independent claim 1 are likewise asserted to be patentable over the cited references. Therefore, it is submitted that independent claims 1 and all the claims depending therefrom (claims 2-8, 10 and 11) are unobvious over the cited prior art of record, whether taken alone or in any combination.

It is therefore respectfully submitted that the rejections under 35 U.S.C. 103(a) should be withdrawn.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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